



Legislative Fiscal Bureau

One East Main, Suite 301 • Madison, WI 53703 • (608) 266-3847 • Fax: (608) 267-6873

May 24, 2001

Joint Committee on Finance

Paper #694

Dry Cleaner Environmental Response Program - Deductible for Closed Facilities and Awards Appropriation (DNR -- Air, Waste and Contaminated Land)

[LFB 2001-03 Budget Summary: Page 500, #15 part d]

CURRENT LAW

The dry cleaner environmental response program was created in 1997 Act 27, effective October 14, 1997, to provide financial assistance awards for reimbursement of certain eligible costs of investigation and remedial action of contamination from dry cleaning solvents at current and certain former dry cleaning facilities. DNR administers the financial assistance and remediation components of the program. The Department of Revenue collects the fees created to support the program, which include: (1) a dry cleaning facility license fee of 1.8% of gross receipts from dry cleaning; (2) a dry cleaning solvents fee imposed on persons who sell a dry cleaning solvent to a dry cleaning facility equal to \$5.00 per gallon of perchloroethylene sold and \$0.75 per gallon of hydrocarbon-based solvent sold; and (3) a solvent inventory fee of the same amounts per gallon imposed on the gallons in the inventory of dry cleaning facilities on October 14, 1997. DNR is appropriated \$2,450,000 SEG in 1999-00 and \$1,050,000 SEG in 2000-01 in a biennial appropriation for financial assistance awards under the program.

The owner or operator of an open facility pays a deductible of the following: (1) if eligible costs are \$200,000 or less, \$10,000; (2) if eligible costs are \$200,001 to \$400,000, \$10,000 plus 8% of the amount by which eligible costs exceed \$200,000; and (3) if eligible costs exceed \$400,000, \$26,000 plus 10% of the amount by which eligible costs exceed \$400,000 (up to a maximum award of \$500,000). The supplemental deductible paid by a closed facility is: (1) an amount equal to 30 times the average license fee paid for the year in which the award is made; (2) an amount equal to 30 times the total solvent fees collected in the year in which the award is made divided by the number of dry cleaning facilities in operation during that year; and (3) an amount equal to the average solvent inventory fee.

GOVERNOR

Delete the supplemental deductible paid for closed facilities so that the deductible at closed facilities would be the same as for open facilities. Direct DNR to, before July 1, 2002, identify any awards paid to closed facilities based on the current law deductible, recalculate the award based on the deductible included in the bill and pay the recipient the difference between the amount of the original award and the recalculated award.

DISCUSSION POINTS

1. When the dry cleaner environmental response program was created in the 1997-99 biennial budget act, a supplemental deductible for closed facilities was created that would be significantly higher than the deductible paid by open facilities. Creation of a higher closed facility deductible recognized that: (a) the long-term demand for financial assistance was predicted to be greater than fees paid by the dry cleaning industry to support the program; (b) the focus of the program would be on active, open facilities; and (c) closed facilities did not or are not paying the program fees required from open facilities.

2. In May, 2000, DNR sought support from the Dry Cleaner Environmental Response Council for a proposed statutory change to eliminate the higher deductible for closed facilities because the Department considered it an administrative problem and it would make it difficult to waive a deductible in financial hardship situations because the deductible would be a lien on the property until it would be paid. At that time, the Council opposed the change because it felt there were some developers who could gain an advantage if the closed facility deductible would be eliminated.

3. When DNR began paying claims under the program in the summer of 2000, claimants for at least three dry cleaning facilities discovered that they met the definition of a closed facility and were subject to the higher deductible. One of the facilities still operates in another location but the cleanup occurred at a closed former location and therefore is assessed the closed facility deductible. Two of the facilities still operate as a dry cleaner but are considered to be a former dry cleaner because they switched to use of carbon dioxide instead of "dry cleaning solvents" currently or "dry cleaning products" under the bill.

4. In discussions held since the summer of 2000, DNR and some industry representatives agreed that it may be appropriate to propose eliminating the current closed facility deductible because it affects facilities in a different way than originally anticipated. DNR and industry representatives now believe that the closed facility deductible might encourage dry cleaner owners or operators to remain open in locations with older equipment until a cleanup is completed instead of consolidating operations into one location that uses newer, higher-efficiency processes and equipment and paying the closed facility deductible for the closed, older location. The Dry Cleaner Environmental Response Council did not meet between May, 2000 and March, 2001. At a March, 2001, meeting, the Council indicated its support of the provision in the bill.

5. DNR is unsure the extent to which program demand would increase under the bill's elimination of the closed facility deductible. DNR calculated the supplemental deductible to be paid by a closed facility in 2000-01 to be \$110,473. The three known sites were assessed a total closed deductible of \$177,000. (Costs were less than the closed facility deductible at two of the three sites.)

6. DNR is aware of at least a few other eligible closed facilities for which claims have not been submitted because the closed facility deductible exceeds costs. It is probable that under the bill, additional owners or operators of closed dry cleaning facilities would submit claims, especially where the cleanup costs are between \$10,000 (the minimum open facility deductible) and \$110,473 (the current closed facility deductible). This would increase financial assistance costs under the program by an undetermined amount.

7. It could be argued that the closed facility deductible should continue so that the fund focuses on open and active facilities that pay fees into the fund. However, it could also be argued that dry cleaner owners and operators should not be penalized for closing older facilities and consolidating operations, and that some of the owners and operators of closed facilities might still be paying fees for other, open facilities.

8. As of May 7, 2001, DNR had paid or approved claims for 22 sites totaling \$914,800, of which \$369,700 was for "past costs" incurred between January 1, 1991, and before October 14, 1997 (the effective date of the program). The amount of eligible past costs is significantly less than the preliminary estimates of \$2.5 million to \$7.5 million that were made by DNR and industry officials in the spring of 1999. DNR administrative rules required all past costs to be submitted by April 30, 2000.

9. DNR estimates that it will pay a total of \$1,257,800 in financial assistance awards in 2000-01. The remaining \$2,242,200 of the \$3,500,000 available for awards in the 1999-01 biennium will lapse to the dry cleaner environmental response fund and will be available for appropriation from the fund in the 2001-03 biennium. Shown in the following table, under the bill, the fund will have a June 30, 2003, balance of approximately \$2.2 million. The fund received revenues of almost \$1.4 million in 1999-00 and will receive estimated ongoing revenues of approximately \$1.2 million annually from the dry cleaning facility license and the dry cleaning solvents fee. Revenues were higher in 1999-00 than are expected in future years because 1999 Act 9 changed payments of the dry cleaning facility license fee from annual to quarterly.

Dry Cleaner Environmental Response Fund Estimated Condition

	1999-00 <u>Actual</u>	2000-01 <u>Estimated</u>	2001-02 <u>Estimated</u>	2002-03 <u>Estimated</u>
Opening Balance, July 1	\$1,498,300	\$2,698,400	\$2,437,200	\$2,298,100
Revenues				
Dry Cleaning Facility License Fee	\$1,103,700	\$850,000	\$858,500	\$867,100
Dry Cleaning Solvents Fee	150,400	200,000	200,000	200,000
Interest Income	<u>108,500</u>	<u>160,000</u>	<u>100,000</u>	<u>100,000</u>
Total Revenue	\$1,362,600	\$1,210,000	\$1,158,500	\$1,167,100
 Total Revenue Available	 \$2,860,900	 \$3,908,400	 \$3,595,700	 \$3,465,200
Expenditures and Reserves				
Financial Assistance	\$0	\$1,257,800	\$1,050,000	\$1,050,000
Administration and Reserves	154,600	213,400	247,600	250,600
Encumbrances	<u>7,900</u>	<u>0</u>	<u>0</u>	<u>0</u>
Total Expenditures	\$162,500	\$1,471,200	\$1,297,600	\$1,300,600
 Closing Balance, June 30	 \$2,698,400	 \$2,437,200	 \$2,298,100	 \$2,164,600

10. Under the bill, DNR would be required to reimburse the three known sites with closed facility deductibles before July 1, 2002. DNR would make the payments of \$177,000 for the three sites from its \$1,050,000 financial assistance appropriation. The bill could be amended to provide additional expenditure authority in 2001-02 to make the payments. Under this alternative, the current appropriation amount would continue to be available for existing demand.

11. DNR estimates that incoming dry cleaner claims during the 2001-03 biennium will total approximately \$3.9 million for 55 sites. However, the program has been paying financial assistance awards for less than one year so it is difficult to predict long-term program demand. Additional claims due to the elimination of the closed facility deductible would increase the demand. The bill continues base funding of \$1,050,000 in each year in a biennial appropriation, for total financial assistance of \$2.1 million. The estimated fund balance is sufficient that the bill could be amended to increase the financial assistance appropriation by \$1.8 million in 2001-02 to provide expenditure authority equal to potential program demand.

ALTERNATIVES TO BASE

A. Closed Facility Deductible

1. Approve the Governor's recommendation to: (a) delete the supplemental deductible paid for closed facilities; and (b) direct DNR to, before July 1, 2002, identify any awards paid to closed facilities based on the current law deductible, recalculate the award based on the deductible included in the bill and pay the recipient the difference between the amount of the original award and the recalculated award.
2. Maintain current law.

B. Financial Assistance Appropriation

1. Increase the dry cleaner environmental response financial assistance appropriation by \$177,000 SEG in 2001-02 to pay for the known costs of reimbursing existing claimants who were subject to the closed facility deductible.

Alternative B1	SEG
2001-03 FUNDING (Change to Base)	\$177,000
<i>[Change to Bill]</i>	<i>\$177,000]</i>

2. Provide an additional \$1,800,000 SEG in 2001-02 for dry cleaner environmental response financial assistance. (This would appropriate expected dry cleaner environmental response fund revenues for potential demand for financial assistance under the program during the biennium.)

Alternative B2	SEG
2001-03 FUNDING (Change to Base)	\$1,800,000
<i>[Change to Bill]</i>	<i>\$1,800,000]</i>

3. Maintain current law. (If demand exceeds the appropriated amount and there is a sufficient fund balance, DNR could request an appropriation increase under s. 13.10.)

Prepared by: Kendra Bonderud